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HOUSE BILL 3086 By
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SENATE BILL 3186
By Dixon

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 7, relative to "Tennessee TennCare Reform Act of 2000."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This Act shall be known and may be cited as the "Tennessee TennCare Reform Act of 2000".

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 7, is amended by adding sections 3-13 as a new, appropriately designated part.

SECTION 3. Definitions pertaining to this chapter shall apply unless they conflict with the following definitions which are specific to this part:

(1) "Commissioner" means the Commissioner of Employment Security.

(2) "Employment" does not include the following services:

(A) Service performed by an individual in the employ of an employer who, by the laws of the United States, is responsible for care and cost in connection with such service.

(B) Service performed by an individual in the employ of the individual's spouse, son, or daughter; and service performed by an

individual under the age of twenty-one (21) in the employ of the individual's father or mother or other immediate relative; and service performed by an individual under the age of eighteen (18).

(C) Service performed by an individual, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission.

(D) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the provisions of law relating to federal employment, including unemployment compensation.

(3) "Premium" means the amount payable to a prepaid health care contractor as consideration for the contractor's obligations under a prepaid health care plan.

(4) "Prepaid health care plan" means any agreement by which any prepaid health care plan contractor undertakes in consideration of a stipulated premium:

(A) Either to furnish health care, including hospitalization, surgery, medical or nursing care, drugs or other restorative appliances, subject to, if at all, only a nominal per service charge; or

(B) To defray or reimburse, in whole or in part, the expenses of health care.

(5) "Prepaid health care plan contractor" means:

(A) Any medical group or organization that undertakes under a prepaid health care plan to provide health care; or

(B) Any nonprofit organization that undertakes under a prepaid health care plan to defray or reimburse in whole or in part the expenses of health care; or

(C) Any insurer who undertakes under a prepaid health care plan to defray or reimburse in whole or in part the expenses of health care.

(6) "Principal employer" shall be the employer who pays an individual the most wages if an individual is concurrently a regular employee of two or more employers; provided that if one of the employers, who does not pay the most wages, employs the regular employee for at least thirty-five hours per week, the employee shall determine which of the employers shall be the employee's principal employer. The employee's other employers are secondary employers. An employer so designated as the principal employer shall remain as such principal employer for one (1) year or until change of employment, whichever is earlier.

(7) "Regular employee" means a person employed in the employment of any one employer for at least twenty (20) hours per week, but does not include a person employed in seasonal employment. Seasonal employment means employment activities by a seasonal employer during a seasonal period or periods in the seasonal pursuit in relation to cultivating, harvesting, processing or handling agricultural products as established by rules and regulations.

SECTION 4. (a) Every employer who pays to a regular employee monthly wages in an amount to be determined by the commissioner pursuant to rules and regulations pursuant to this subsection, shall provide coverage of such employee by a prepaid group health plan qualifying under this subsection.

(b) In order to qualify as a prepaid group health plan under this subsection, the plan shall provide health care benefits equal to, or medically reasonably substitutable

for, the benefits required by rules and regulations promulgated by the commissioner in accordance with this subsection.

(c) Every employer required to provide coverage for the employer's employees by a prepaid group health care plan under this part shall elect from the following:

- (1) A plan available through TennCare or any successor program;
- (2) A plan which obligates the prepaid health care plan contractor to furnish the required health care benefits; or
- (3) A plan which obligates the prepaid health care plan contractor to defray or reimburse the expenses of health care.

The employer's election is binding for one (1) year.

(d) Whether the employer elects a plan type described in subsection (c)(1), (2) or (3), the employer may choose the particular contractor but the employee shall not be obligated to contribute a greater amount to the premium than the employee would have to contribute had the employer elected coverage with the contractor providing the prevailing coverage of the respective type in the state. The employer shall provide coverage with the prepaid health care plan contractor selected pursuant to this subsection for all the employer's employees in the state electing this type of coverage who are covered by the provisions of this chapter, except for employees covered by the health care provisions of an applicable collective bargaining agreement.

SECTION 5. (a) An employer who has been notified by an employee, in the form prescribed by the commissioner, that the employer is not the principal employer, shall be relieved of the duty of providing the coverage required by this chapter until the employer is notified by the employee that the employer has become the principal employer. The employer shall notify the commissioner in the form prescribed by the director, that the employer is relieved from the duty of providing coverage or of any change in that status.

(b) An employer shall be relieved of the employer's duty with respect to any employee who has notified the employer, in the form specified by the director, that the employee is:

(1) Protected by health insurance or any prepaid health care plan established under any law of the United States;

(2) Covered as a dependent under a prepaid health care plan, entitling the employee to the health benefits required by this chapter; or

(3) A recipient of public assistance or covered by a prepaid health care plan established under the laws of the state governing medical assistance.

(c) Employers receiving notice of exemption under this section shall notify the commissioner of such claim in the form prescribed by the commissioner.

SECTION 6. Unless an applicable collective bargaining agreement specifies differently, every employer shall contribute at least one-half of the premium for the coverage required by this chapter and the employee shall contribute the balance; provided that in no case shall the employee contribute more than 1.5 per cent (1.5%) of the employee's wages; and provided that if the amount of the employee's contribution is less than one-half (1/2) of the premium, the employer shall be liable for the whole remaining portion of the premium.

The employer shall withhold the employee's share from the employee's wages with respect to pay periods as specified by the director. If an employee separates from the employee's employment after the employee's employer has prepaid the employee's share of the cost of providing health care coverage, the employer may deduct an amount not to exceed one-half (1/2) of the premium cost but without regard to the 1.5 per cent (1.5%) limitation, from the last salary or wages due the employee, or seek other appropriate means to recover the premium.

SECTION 7. The employer shall provide the coverage required by this part for any regular employee who has been in the employer's employ for four (4) consecutive weeks at the

earliest time thereafter at which coverage may be provided with the prepaid health care plan contractor selected pursuant to this chapter.

SECTION 8. If any employee is hospitalized or otherwise prevented by sickness from working, the employer shall enable the employee to continue the employee's coverage by contributing to the premium the amounts paid by the employer toward such premium prior to the employee's sickness for the period that such employee is hospitalized or prevented by sickness from working. This obligation shall not exceed a period of three (3) months following the month during which the employee became hospitalized or disabled from working, or the period for which the employer has undertaken the payment of the employee's regular wages in such case, whichever is longer.

SECTION 9. (a) An employee may waive individually all of the required health care benefits pursuant to this chapter by:

(1) Requesting the waiver by a writing submitted to the employer; and

(2) Receiving approval of the waiver from the commissioner upon the commissioner determining that the employee has other coverage under a prepaid health care plan which provides benefits that meet the standards prescribed herein.

(b) The employer who receives from an employee a written request for a waiver under this section shall transmit to the commissioner a copy of the waiver, on a form prescribed by the commissioner, and a copy of the prepaid health care plan on the basis of which the waiver is requested.

(c) A waiver under this section is binding for one (1) year and is renewable for subsequent one-year periods.

(d) An employer who, directly or indirectly, coerces or attempts to coerce an employee in making a waiver under this section shall be subject to the penalty provided in Section 10(b).

(e) An employee may not agree to pay a greater share of the premium for such benefits than is required by this part.

(f) An employee may consent to pay a greater share of the employee's wages and to a withholding of such share by the employer for the purpose of providing prepaid health care benefits of the employee's dependents under the plan providing such benefits for the employee's self.

SECTION 10. (a) An employer who fails to comply with Sections 4, 6, 7 or 8 of this act shall pay a penalty of not less than two hundred fifty dollars (\$250.00) or one dollar (\$1.00) per employee for every day during which such violation occurs, whichever is greater.

(b) Any person who, after twenty-one (21) days written notice and the opportunity to be heard by the commissioner, is found to have violated any provision of this chapter or rule adopted thereunder for which no penalty is otherwise provided, shall be fined not more than two hundred-fifty dollars (\$250.00) for each offense.

(c) An employer who, directly or indirectly, coerces, interferes with or attempts to coerce or interfere with an employee relative to the requirements herein shall be subject to the penalties in (a) above.

(d) Any employer who fails to initiate compliance with the coverage requirements herein for a period of thirty (30) days, may be enjoined by the circuit court of the district in which the employer's principal place of business is located from carrying on the employer's business any place in the state so long as the default continues, such action for injunction to be prosecuted by the attorney general or any district attorney if so requested by the commissioner.

(e) All fines collected pursuant to this chapter shall be deposited into the general fund and earmarked for the TennCare program.

SECTION 11. Any employer who fails to provide coverage as required by this chapter shall be liable to pay for the health care costs incurred by an eligible employee during the period in which the employer failed to provide coverage.

SECTION 12. (a) The commissioner, in consultation with the commissioners of finance and administration and health shall administer and enforce this Act.

(b) The commissioner, in consultation with the commissioners of finance and administration and health, is authorized to promulgate rules and regulations in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5 as necessary, including public necessity rules as necessary for timely implementation.

SECTION 13. This act shall not be construed to interfere with or diminish any protection already provided pursuant to any collective bargaining agreements or employer-sponsored plan that is more favorable to the employee. This subsection shall not apply to plans governed by The Employer Retirement Income Security Act of 1974 ("ERISA").

SECTION 14. Tennessee Code Annotated, Section 50-7-402, is amended by adding the following language as a new, appropriately designated subsection:

(a) A surcharge in the amount of one-half of one percent (.005%) shall be assessed on the taxable payroll for the calendar year or fiscal year, as appropriate. If the employer makes health insurance available for its employees as defined herein, the employer shall receive a one hundred percent (100%) credit for the surcharge assessed. If the employer does not make health insurance available, the money collected from the surcharge assessed against such employees shall be deposited in the general fund and earmarked for the TennCare program to provide coverage for uninsured Tennesseans.

SECTION 15. For purposes of implementation planning and promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2000, the public welfare requiring it.